IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODG.) NO.2272 OF 2004

AFL Private Limited & anr. ..Petitioners.
Vs.
Union of India &
Airport Authority of India ..Respondents.

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Mr. J. Pochkhanwalla with Mr. D.D. Madon i/b Mulla & Mulla & Craigie Blunt & Caroe for the Petitioners.
Mr. Y.S. Bhate with Mr. A.S. Rao for Respondent No.1.
Mr. P.K. Samdani i/b M/s. Bhaishanker Kanga & Girdharlal for Respondent No.2.

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CORAM : DALVEER BHANDARI, C.J.&
DR.D.Y.CHANDRACHUD, J,

26h August, 2004.

P.C. :

1. This petition has been filed for seeking directions under Article 226 calling for the papers and proceedings pertaining to the Tender Notice (Exhibit "B") and to the introduction of Clause 10 of the notice inviting tender dated 31st July, 2004. According to the petitioners, the incorporation of the conditions in Clause 10 is illegal and discriminatory. The relevant portion of Clause 10 reads as under :

> "10. The party willing to purchase the tender documents is required to give declaration on non-judicial stamp paper of Rs.100/- duly attested by notary public including :
>
> i. the details of their contract at all the Airports;
> ii. liability of payment of outstanding dues (disputed/undisputed) in respect of 05 International Airports as a whole except the dues equal to the current month licence fees collectively:"

2. The learned counsel appearing for the petitioners submitted that this condition is discriminatory, because nowhere else the respondents have incorporated this condition and even in Bombay this condition has not been incorporated in other tenders. In response to this, the learned counsel appearing for Respondent No.2 submitted that this submission is not factually correct. Similar condition is there in large number of other tenders floated by the Airports Authority of India. The learned counsel has drawn our attention to some of those tenders. At page 100 of the compilation the Airports Authority of India issued notice inviting tenders in which similar condition exists in Clause 6(ii). Clause 6(ii) reads as "Their liability of payment of disputed/undisputed dues of AAI".

There is another form of tender issued by the Airports Authority of India at page 101. In that also similar clause 6(ii) exists. Similar condition exists in Clause 6(ii) of another tender issued at page 102. All these three tenders were issued in Bombay. The learned counsel for Respondent No.2 submitted that similar conditions have been incorporated in Chennai and other places. In this ground of discrimination, we do not find any merit and the petition is rejected.

3. Even otherwise also, we do not find that this condition is either unreasonable or illegal. In Tata Cellular v. Union of India (AIR 1996 SC 11), the Supreme Court had occasion to examine controversies pertaining to tender documents. The Supreme Court in paragraph 113 of the judgment observed thus :

> "The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts."

The writ petition being devoid of any merit, is accordingly rejected.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.